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Human Rights Committee

Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure

Sixth periodic reports of States parties due in 2016

Hungary*, **

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** The annexes to the present report are on file with the Secretariat and are available for consultation. They may also be accessed from the web page of the Human Rights Committee.

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I. General remarks

1. Hungary submits its written replies to the list of issues, which were adopted by the 115th session of the Human Right Committee. Hungary asks the Human Rights Committee to consider these responses as the State party's sixth periodic report under article 40 of the Covenant. As State Party to the International Covenant on Civil and Political Rights, Hungary submitted its First Report on the implementation of the Covenant in 1977, its Supplementary Report in 1979, its Second Report in 1985, its Third Report in 1991, its Fourth Report in 1999 and the Fifth Report in 2009.

II. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

Question no. 1 — Measures taken with regard to the Committee's recommendation no. CCPR/C/HUN/CO/5[1]

Protection of personal data — CCPR/C/HUN/CO/5

2. According to Article VI Paragraph (2) of the Fundamental Law of Hungary (hereinafter: Fundamental Law), "[e]*very person shall have the right to the protection of his or her personal data, and to access and disseminate data of public interest*".

3. As concerns the specific regulation Hungary notes that Act LXIII of 1992 is no longer in effect and informs the Honourable Committee that data protection is governed by Act No. CXII of 2011 on Informational Self-Determination and Freedom of Information (hereinafter: Info Act).

4. Section 5 § (1) allows, as a **general rule**, the processing of personal data of an individual based on the individual's consent. On the other hand, it also allows for **mandatory data collection** if the data processing pursues a public interest, upon the authorisation of an Act of Parliament, within the scope specified in that Act. However, such limitation shall always be in line with the principle of necessity and proportionality enshrined in the Fundamental Law and Section 4 § (1) and (2) of the Info Act.[2]

5. Concerning **special categories of personal data** the Info Act in Section 5 § (2) sets out stricter conditions. Accordingly, only personal data essential and suitable to achieve the purpose of the processing may be processed to the extent and for the time required to achieve the purpose. The consent of the data subject for the processing of special personal data shall be given in writing. Mandatory data processing of special data, including personal data concerning racial origin, is restricted to certain purposes based on the public interest.

6. One of these interests ensures in particular the effective implementation of the International Covenant on Civil and Political Rights (hereinafter: ICCPR or the Covenant): "*in case such processing is necessary for the implementation of an international agreement promulgated in Act of Parliament*". Therefore the collection and processing of special

[1] For comments on certain recommendations listed in CCPR/C/HUN/CO/5 see further questions and answers below.

[2] "Personal data may exclusively be processed for a specific purpose to exercise rights and fulfil obligations. Data processing must at every stage comply with the objective of the data processing; data must be collected and controlled in a fair and legal manner.".

categories of personal data shall be deemed lawful, inter alia, if it is necessary for the implementation, including the monitoring and evaluation of programmes, of the Covenant.

7. Accordingly, the Info Act allows for the processing of personal data either on the basis of the data subject's consent or a statutory rule reflecting public interest. The Info Act, in line with the relevant EU acquis,[3] also takes account of the interest of the data controller while ensuring the fundamental right to the protection of personal data of the data subject.[4]

Commissioner for Fundamental Rights (CCPR/C/HUN/CO/5 — paragraph 7)

8. The Fundamental Law prescribes for the institution of the Commissioner for Fundamental Rights (hereinafter: Commissioner), who shall undertake activities aimed at protecting fundamental rights. The present powers of the Commissioner ensure a high level of protection both in case of **ex officio proceedings and individual complaints**.

9. Hungary submit that until 1 January 2012 four ombudsmen were active, two of them (commissioner for the rights of the minorities and the commissioner for future generations) continue their work as deputies of the Commissioner. The constitutional designation of the deputies together with the provisions of the Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: CFR Act) ensure that the deputies do not simply substitute the Commissioner but have their own competencies and responsibilities in the special fields assigned to them. The Commissioner shall report annually to the Parliament on his or her activities.

10. The proceedings of the Commissioner may be initiated by any person, if in his or her opinion the activity or omission of an authority infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto, provided that this person had exhausted the available administrative legal remedies.

11. Proceedings of the Commissioner are free of charge and the identity of the person may be kept confidential. In conducting his or her proceedings, the Commissioner shall be independent, may take measures exclusively on the basis of the Fundamental Law and acts of Parliament. The Commissioner may not be given instructions regarding his or her activities.

12. The role of the Commissioner has become more important also in initiating **posterior norm control procedures** before the Constitutional Court from the time of the abolition of the institution of the so-called *actio popularis* on the basis of which any person could initiate the legal scrutiny of laws before the Constitutional Court.

13. Furthermore, in accordance with Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: OPCAT) the Office of the Commissioner is responsible for ensuring the so-called **national preventive mechanism**. For this purpose the

[3] Directive 95/46/EC.

[4] Section 6 § (1): Personal data may be lawfully processed subject to the following conditions:

1. the consent of the data subject is impossible to be obtained or it would entail disproportionate cost to obtain such consent;

2. the data processing is necessary either to:

a. fulfil a legal obligation (be it statutory or contractual);

b. enforce a legitimate interest of the data controller or a third party;

3. if the data processing is based on point b) of Article 6 § (1), the interest of the data controller shall be counterweighed with the right to the protection of personal data of the data subject and the limitation imposed on this right shall be proportionate to the importance of such interest.

Commissioner has established a Civil Consultative Body in order to utilize the outstanding practical and/or theoretical knowledge of its members.

14. The Commissioner and his or her deputies are elected by the Parliament for a period of six years with the votes of two-thirds of all Members of Parliament from among highly qualified lawyers. Neither the Commissioner nor the deputies may be members of a political party and cannot engage in political activities.

15. The **budgetary and financial independence** of the Office of the Commissioner is safeguarded by Section 41 § (4) of the CFR Act: *"[t]he Office shall have a separate chapter in the central budget and the powers of the head of organ directing the chapter shall be exercised by the Secretary General."*.

Equal Treatment Authority (CCPR/C/HUN/CO/5 — paragraph 8)

16. Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter: Equal Treatment Act) ensures complete independence for the Equal Treatment Authority, the organ responsible for overseeing compliance with the obligation of equal treatment.

17. Pursuant to Section 33 § (2) of the Equal Treatment Act, the Equal Treatment Authority shall be an autonomous state administration organ. This legal status ensures complete independence for the Equal Treatment Authority as to its organisation, tasks and competences, personnel, finances and budget.

18. From an **organisational point of view**, the Equal Treatment Authority does not form part of the hierarchical organisation of public administration; it is not under the direction or supervision of the government. The Equal Treatment Act guarantees that the Equal Treatment Authority exercises its tasks and competences laid down in acts free from any outside influence and according to professional criteria only.

19. The **budgetary and financial independence** of the Equal Treatment Authority is based on Section 34 § (1) and (2) of the Equal Treatment Act, pursuant to which the Equal Treatment Authority may autonomously manage the budget appropriated for it in the Act on the central budget, and, with the narrowly defined exception of the budgetary effects of a possible natural disaster, only the Parliament may take decisions thereon. The financial situation of the Equal Treatment Authority has been stabilised in the previous years (2010: 207M HUF, 2011: 190M, 2012: 111M, 2013: 213M, 2014: 273M and 2015: 322M).

20. The **President of the Equal Treatment Authority** is appointed by the President of Hungary for 9 years. The length of the mandate for a term extending beyond a parliamentary session ensures the independence from the everyday political developments and "keeps distance" from the Government and the Parliament. The rigorous professional selection criteria vis-à-vis potential candidates for the presidency of the Equal Treatment Authority safeguard that the choice is based on professional suitability. Having been a member of Government or a leading official in any political party or having held a leading state office in the four years prior to election shall disqualify persons from the candidates. The President of the Equal Treatment Authority also has to comply with detailed rules on incompatibility ensuring his independence. [5]

21. Finally, the Government note that Government Decree No. 362/2004 (XII.26.) had been rescinded on 1 July, 2013.

[5] See Sections 35 § and 36§ of the Equal Treatment Act.

Hate speech (CCPR/C/HUN/CO/5 — paragraph 18)

22. The efficient fight against hate speech presupposes equilibrium between the right to freedom of expression and the protection of dignity of social groups. In this context, the **Fourth Amendment of the Fundamental Law** (hereinafter: Fourth Amendment) has added two essential elements to the provision defining freedom of expression.

23. One of these, according to which exercising the freedom of expression and opinion cannot be aimed at violating other person's human dignity, raised the former case-law of the Hungarian Constitutional Court to a constitutional level.[6]

24. The other innovation of the Amendment allows members of national, ethnic, racial or religious groups to bring action before the court against any statement considered injurious to the group alleging violation of their human dignity — a limitation which, again, had been present for years in the Constitutional Court's case-law.[7]

25. These provisions together with Article XV Paragraph (2) of the Fundamental Law on the right to equal treatment form the framework of protection against racial discrimination at constitutional level — in compliance with our international obligations, including e.g. the Convention on the Elimination of All Forms of Racial Discrimination adopted by the United Nations in New York on the 21st of December 1965.

26. Further guarantees are included in **sectorial acts**. Act V of 2013 on the Civil Code (hereinafter: Civil Code) inserted a new legal institution related to the protection of personal rights. Under Section 2:54 § (5) of the Civil Code *"Any member of a community shall be entitled to enforce his personality rights in the event of any false and malicious statement made in public at large for being part of the Hungarian nation or of a national, ethnic, racial or religious group, which is recognized as an essential part of his personality, manifested in a conduct constituting a serious violation in an attempt to damage that community's reputation, by bringing action within a thirty day preclusive period."*

27. The Hungarian government is committed to offer efficient protection against hate speech for different social groups through **criminal law legislation**, as well.[8]

28. The Hungarian **media law** expressly prohibits publishing press and/or media content that incites to hatred. Under Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content (hereinafter: Freedom of the Press Act) *"[m]edia content may not contain facilities for inciting hatred against peoples, nations, national, ethnic, linguistic and other minorities, or any majority or religious community."* Act CLXXXV of 2010 on Media Services and on the Mass Media (hereinafter: Media Act) authorizes the Media Council to initiate and conduct an investigation in the event of infringement of press and media law requirements, including the prohibition of hate content, and to take appropriate measures consistent with the gravity of the infringement. The fact that certain public interests in relation to the formation of public life should be protected against unfounded attacks has been acknowledged by the European Court of Human Rights (hereinafter: ECtHR), as well.[9]

Self-government of nationalities (CCPR/C/HUN/CO/5 — paragraph 21)

29. Article XXIX (1) of the Fundamental Law stresses that "[n]ationalities living in Hungary are constituent parts of the State", in accordance with which nationalities "shall have the right to use their mother tongue, to use names in their own languages individually

[6] Decision no. 36/1994. (VI.24).
[7] See e.g. decision no. 30/1992. (V.26).
[8] See also Point 5.2.
[9] ECtHR, *Skałka v. Poland*, Application no. 43425/98, 27 May 2003, § 34.

and collectively, to nurture their own cultures, and to receive education in their mother tongues." The specific regulation, including the rules for elections, is to be found in Act CLXXIX of 2011 on the Rights of Nationalities (hereinafter: Act on the Rights of Nationalities).

30. The conditions of **participating at the elections** for the self-governments of nationalities determined in the Act on the Rights of Nationalities are necessary and proportionate with regards to the goal of combatting the abuse of the electoral system for minority self-governments, especially to prevent creating self-governments representing a minority with whom voters have no links at all. These rules have been elaborated under the conditions defined by the Hungarian Constitutional Court.[10] We note that declaring one's nationality affiliation is not directly linked to nationality elections and making such statement is voluntary. Further, the data acquired is suitable not only to prevent abuses during elections but to assess the actual number of the nationality population.

31. With regards to the free expression of identity, the Hungarian Constitutional Court took the view that the right to self-determination does not exclude the preparation and use of statistical data in order to support the fulfilment of other duties.[11] The current regulation supports the free declaration of identity as a member of a nationality, while safeguarding the basic guarantees: "when the register of minority voters is established, to respect compliance with the principles of self-identification and to follow the international standards on personal data protection."[12]

32. Furthermore, Hungary recalls that the law offers a high level of protection of rights for nationalities even in lack of self-government of the given nationality. One of the most important developments is that the new electoral law introduced preferential **mandates for nationalities** — unprecedented in Hungarian history.

33. Finally, the State Party reiterates that the Venice Commission has confirmed that, in overall terms, the Hungarian regulation is consistent with international standards.[13]

Implementation of the Committee's Views

34. It is of utmost importance for Hungary to comply with the Committee's Views to the extent possible in the framework of the Hungarian legal system. Therefore, in order to give effect to the recommendations phrased by the Committee at all times, Hungary is committed to consider amendments to the relevant law, if necessary; is ready to take measures to cease the infringement of rights of an individual — should that be continuous. In individual complaint procedures Hungary is also keen on following up the situation of the complainant if he/she is still visible before the Hungarian authorities and report on it to the Committee.

Question no. 2 — Significant developments in protecting and promoting human rights — legal framework

35. The Fundamental Law entered into force on 1 January 2012. The Fundamental Law fully reflects a democratic state governed by the rule of law, and is consistent with the international and European legal standards.

[10] Decision no. 45/2005. (XII. 14).

[11] Decision no. 41/2012. (XII. 6).

[12] Third Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Strasbourg, 17 September 2010. Point 38.

[13] Venice Commission, Opinion on the Act on the Rights of Nationalities of Hungary, Strasbourg, 19 June 2012. Points 82-84.

36. The **catalogue of fundamental rights** contains all fundamental rights that are commonly granted and recognized throughout Europe. Our Fundamental Law declares principles indirectly derived from our former Constitution by the Constitutional Court - thereby elevating the case-law of the Constitutional Court in a number of cases to a normative level. The most important elements of this new approach are the following:

- The catalogue of fundamental rights recognizes human dignity stipulating that it shall be inviolable.
- The Fundamental Law has preserved (e.g. torture, inhuman or degrading treatment or punishment etc.) and even broadened (e.g.: servitude, trafficking in human beings, practices aimed at eugenics etc.) the list of absolute bans in connection with the protection of human dignity.
- The right to fair trial and the right to judicial decision within a reasonable time now appear *expressis verbis* in the Fundamental Law.
- As concerns the limitation of rights, Article I § (3) incorporates the former case-law of the Constitutional Court into our Basic Law: "*[a] fundamental right may only be restricted in order to enforce another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary and proportionate to the objective pursued, and with respect to the essential content of the relevant fundamental right.*"

37. As far as the **Amendments of the Fundamental Law** are concerned, from a human rights approach, we highlight, inter alia, the following modifications:

- The Fourth Amendment added the definition of the "basis for family relationship" to Article L). It has to be emphasized that this provision defines the basis of family relationships, but not the family itself. Furthermore, this provision of the Fundamental Law does not exclude the legal protection of family relationships in a broader sense.
- Article IX of the Fundamental Law amended by the Fourth Amendment entailed a significant step in the field of human rights protection as it provides for a more apparent protection of human dignity. By the first element of this amendment, according to which exercising the right to freedom of expression cannot be purported at the violation of human dignity of others, the former case-law of the Hungarian Constitutional Court was raised to a constitutional level. The other innovation of the Amendment entitles members of national, ethnic, racial or religious groups to bring civil law action before the court against any statement considered injurious to the group alleging violation of their human dignity.
- The amendment of Article XXII prescribes that the State and municipal governments shall endeavour to guarantee housing for every homeless person. At the same time it establishes the possibility to outlaw the use of certain specific sections of public areas for habitation, however, only in the interest of protection of public order, public safety, public health and cultural values with the proviso that it is prescribed for by an act of Parliament or municipal decree.
- Finally, as to the developments of the legal framework it shall be noted that Hungary has ratified the following human rights treaties and incorporated them into the domestic legal system: OPCAT, Council of Europe Convention on Action Against Trafficking in Human Beings, Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and the Maritime Labour Convention.

Significant developments in protecting and promoting human rights — institutional framework

Constitutional Court

38. The basic rules concerning the function of the Constitutional Court are set out in the Fundamental Law whereas regulations on its structure and procedure are to be found in Act CLI of 2011 on the Constitutional Court (hereinafter: CC Act).

39. As concerns the **competences** of the Constitutional Court it is of importance that the Fundamental Law abolished the institution of *actio popularis* in case of posterior norm control procedure and introduced changes with regard to the institution of constitutional complaint. Hungary notes that the Venice Commission examined these changes and, as a whole, it formed a positive opinion.

40. In relation to the Covenant in particular, we emphasize that the Constitutional Court scrutinizes the compliance of Hungarian law with Hungary's obligations deriving from international (human rights) treaties. Therefore the reasoning of its decisions usually contains an analysis of the most important human rights conventions, including the Covenant, or the case-law of the ECtHR etc.

41. As far as the **organisation** of the Constitutional Court is concerned, the number of judges has been raised from eleven to fifteen. The members of the Court are elected by the Parliament with qualified majority (the vote of two-thirds of all representatives) for a term of twelve years. The President of the Court is elected by the Parliament, as well. The judges elect the vice president among themselves. The mandate of the members lasts for 12 years, re-election is excluded. In order to become eligible for the position candidates have to meet strict professional requirements.

42. The **financial independence** of the Constitutional Court is also safeguarded in the CC Act. Section 4 § states that the budget of the Constitutional Court shall have a separate chapter within the structure of the central budget.

National Authority for Data Protection and Freedom of Information

43. As referred to this above, until 1 January 2012 four ombudsmen were active including the Commissioner for data protection and freedom of information. Nevertheless, it became clear that due to the spread of information technology, the conditions caused by globalisation and the change of the social attitude, a restructuring of examination and penalisation powers has become necessary.

44. Hence Article VI of the Fundamental Law, after declaring the right to the protection of personal data and the right to access and dissemination of data of public interest, stipulates that an independent authority set up by a cardinal act shall control the enforcement of the right to the protection of personal data and the right to access data of public interest — thereby declaring the independence of the authority at the level of the Fundamental Law.

45. Therefore, the Info Act established the **National Authority for Data Protection and Freedom of Information** (hereinafter: the Data Protection Authority) responsible for supervising and promoting the enforcement of the right to the protection of personal data and the right to access to data of public interest.

46. Pursuant to Section 38 § (1) of the Info Act, the Data Protection Authority shall be an autonomous state administration organ. From an organisational point of view, the Data Protection Authority does not form part of the hierarchical organisation of public administration, it is not under the direction or supervision of the government. Besides, as a

further guarantee we note that amending the governing law (Info Act) require a two-third majority of Parliament.

47. The Data Protection Authority exercises its tasks and competences laid down in acts free from any outside influence and according to professional criteria only. The Data Protection Authority may autonomously manage the budget appropriated for it in the Act on the central budget.

Human Rights Working Group

48. In order to monitor the enforcement of human rights in Hungary and to promote the related professional communication, the so-called Human Rights Working Group (hereinafter: HRWG) was established by the Government in 2012.

49. As part of this work, the HRWG makes recommendations for the government and other administrative bodies involved in legislation and the enforcement of laws. This enables the law-maker to provide for regulations that allow for a wider representation of human rights. During its sessions HRWG discusses suture accession to human rights conventions and the better implementation of our already existing international obligations. The HRWG also operates a so-called Human Rights Roundtable to develop dialogues with civil societies, representative associations and professional organizations scrutinizing the execution of human rights. The Roundtable also makes recommendations in connection with the activities and tasks of the HRWG, moreover, its members discourse about recent human rights issues and write proposals for the decision-maker in thematic workgroups.

Invoking the Covenant in the Hungarian case-law

50. The Hungarian national courts frequently refer to the provisions of the ICCPR. We cite only two of them here due to restrictions as to the volume of the present submission.

- Hungarian courts often refer to the ICCPR when they reverse judgments condemning political crimes in the former socialist system. E.g. the Curia (Supreme Court of Hungary) in a particular case ruled in 2015 that the reason for nullifying the former judgment delivered in the proceedings is the fact that the accused was convicted for an offense against public order (e g. "unlawful crossing of border") which, however, is to be considered the free exercise of rights guaranteed by the ICCPR.[14]

- In another case the Curia referred to, inter alia, Article 18.4 of the ICCPR: "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." According to the Curia, it does not constitute an unlawful segregation in a faith-based school where the vast majority of pupils are of Roma origin if the parents chose that school freely and on the basis of sufficient information, and the students do not suffer a disadvantage because of the quality of the education.[15]

Fourth amendment: Exercising judicial control over legislation

51. The Fourth Amendment to our Basic Law indeed entailed a restriction in this respect stipulating that the President may send back the Basic Law or its Amendments to the Constitutional Court for a constitutional review only if such scrutiny will cover exclusively procedural matters of law.

[14] BH 2015. 96./Curia Bt. I. 740/2014.
[15] EBH 2015. P.6./Curia Pfv. IV. 20.241/2015.

52. At the same time Hungary note that the Constitutional Court has an autonomous competence to examine whether legal regulations are in compliance with the provisions of our Basic Law and international treaties. At this juncture the State Party wish to make reference also to the **revised institution of constitutional complaints** where individuals may challenge the adopted law itself if it has directly led to the violation of his/her rights and no remedies are available. Therefore the Constitutional Court has not quit exercising judicial review over legislation — including those affecting the protection of human rights.

III. Specific information on the implementation of articles 1 to 27 of the Covenant

A. Constitutional and legal framework within which the Covenant is implemented (art. 2)

Question no. 3 — Commissioner for Fundamental Rights[16] — Adequate financial resources

53. The operational costs of the Office are covered by a sum allocated from the State Budget on a yearly basis. Within this amount, no concrete sums are earmarked for the performance of various tasks. Every time when a new task is added to the portfolio of the Commissioner for Fundamental Rights (e.g., as of 01 January 2015, the tasks of the OPCAT National Preventive Mechanism), the amount of the budgetary support gets increased. No special funds are provided for being a "Status A" national human rights institution, since it is considered neither a statutory, nor an extra task. Therefore, funds necessary for covering obligations deriving from "Status A" are allocated, weighing the options, from the Office's budget. The Office usually notifies the Government/Parliament of the arising financial needs. The financial resources required for our operation as a national human rights institution, in accordance with the Paris Principles, are basically ensured.

Commissioner for Fundamental Rights — Scope of mandate

54. The Commissioner for Fundamental Rights is an ombudsman-type institution responsible for the protection of fundamental rights in Hungary, covering the whole spectrum of fundamental rights, including the principle of equal treatment and non-discrimination. The principle of equal treatment is enshrined in Article XV of the Basic Law, which contains a non-exhaustive list of protected grounds. In particular, the term "any other status" may cover forms of intersectional or multiple discrimination, which may be relevant in the case of Roma women, women with disabilities, transgender people, etc. Besides, the Equal Treatment Act is a general law on anti-discrimination rendering already existing rules comprehensive. Therefore the mandate of the Commissioner covers all forms of discrimination against women, including against women belonging to disadvantaged groups.

55. At the same time Hungary notes that the CFR Act sets out the competences of the Ombudsman which mainly cover the actions and omissions of public bodies (authorities) and public service providers. Therefore the Ombudsman may not investigate complains related to the actions of private entities, such as private employers, which limits the Ombudsman's competences in cases related to the discrimination of women.[17]

[16] See also Points 7-14.

[17] The Equal Treatment Authority has broader competences in cases of discrimination by private actors.

B. Non-discrimination and the rights of persons belonging to ethnic, religious, linguistic or sexual minorities

Question no. 4 — 4.1. Measures taken against discrimination

Education

56. It is a primary goal to ensure equitable quality education. In this context, it is a headline target to mitigate segregation, promote inclusiveness and integration in nursery schools and schools. In order to achieve these goals Hungary has set the objectives of the educational sector in the **Public Education Development Strategy** (hereinafter: Strategy) for the period of 2014-2020 including the priority measures to reduce early leaving from education and training and to support inclusive education. Complex interventions laid down in the Strategy contribute to the establishment of an equitable quality education system which generates young people capable of adapting to the challenges of society and economy.

Employment

57. In terms of access to employment the social insurance pension system can be assessed in the light of Act LXXX of 1997 on the eligibility for social insurance and private pensions and the funding of these services. It contains the rules regarding the access to the social insurance pension system which operates according to the principle of insurance. The rules defining the scope of the Act and the definition of an "insured person" contains no distinctions on ethnic, religious, linguistic background or sexual orientation.

Housing

58. The primary directions of state action have been laid down in the **Hungarian National Social Inclusion Strategy (hereinafter: HNSIS)**, adopted in 2011 and updated in 2014.

59. The following results in housing can be reported from the previous years to mention just a few:

- Access to public services was improved through comprehensive settlement rehabilitation programmes with an EU funding of 4 billion forints, which also improved access to community services.
- In order to support the housing component of the SROP 5.3.6 settlement programme, a tender procedure titled "Funding housing investments" (budget after increase: 2.6 billion forints) had been launched. Tenders not only offer the establishment of social housings, but also include other living environment related investments (for example parks, playgrounds) which will become available for every resident in that part of the settlement.

60. Linked to the comprehensive settlement programmes, in the summer of 2015 the Government adopted the "**Policy strategy to manage segregated housing**", which defines its primary objective as to improve the underdeveloped parts of settlements and segregated neighbourhoods in the 2014-2020 period. We note that, after updating the strategy, in September 2015 the Government adopted the **second action plan of the social inclusion strategy for the 2015-2017 period** which is to be served the implementation of HNSIS and is committed to a number of measures in housing such as social, economic inclusion of disadvantaged areas; preventing the exclusion of depopulated villages, development of innovative programmes aimed at the integration of people living in extreme poverty.

Health care

61. The relevant legislation concerning access to health care does not make in any way a distinction in terms of minorities.[18] Everybody has equal opportunity to access the health care system of Hungary. In order to cover the health care costs of the above categories, the State contributes a yearly allowance to the health insurance fund, paying a per capita amount for those who are covered by the health insurance scheme without the obligation of paying contributions. Those who are not insured or entitled to health care by law can obtain right to the health insurance services by paying a flat-rate contribution set by law.

Measures taken to address segregation of Roma children

Legal background

62. The prohibition of segregation in education is declared by the Equal Treatment Act. The implementation of the law is a permanent task and responsibility of every public administration authority concerned. The implementation is supervised by the Equal Treatment Authority. Act CXC of 2011 on Public Education also declare the principle of equal treatment and provides for a remedy in the form of a procedure purporting the declaration of invalidity of illicit decisions. Besides, according to Gov. Decree 229/2012 (VIII.28.) on the Implementation of Act CXC of 2011 on Public Education county-level public education development plans must include measures in favour of ensuring equal treatment.

Public education system

63. Hungary notes that our public education system has been recently transformed having the following elements relevant to the subject matter:

- State maintenance of schools, instead of municipalities, is aimed at reducing the regional inequality and ensuring equal access to quality education for all.
- Since 1st September 2013 Hungary has been ensuring that all children of primary education, national minority education and special education get students' books for free.
- In favour of strengthening the role of schools in equality issue, the full-day school system was introduced in 2012.
- Since 2015 September every 3 year old child must attend nursery school so as to promote subsequent school integration.

Supporting successful school achievement

64. **Programme for Complex Instruction** is suitable to promote successful achievement in schools with disadvantaged and multiply disadvantaged children, children with special needs, and/or behavioural problems, learning difficulties, Roma minority children, etc.. The adaptation of a pilot programme started in 2015 in schools educating disadvantaged and multiply disadvantaged children. 13 schools were chosen based upon a set of criteria. Development and in-service training programmes for teachers were carried out in one school as a pilot in 2015, while the development processes in the remaining twelve schools are financed in the framework of EFOP-3.1.2 (HRDOP) in 2016.

65. The Government of Hungary has established the Anti-Segregation Roundtable not only to tackle illicit exclusive education which hinders the inclusion of Roma children or

[18] Act LXXX of 1997 on the eligibility for social insurance and private pensions and the funding of these services.

children with disadvantaged background by the means of prohibition, but also to take efficient measures in order to eliminate segregation.

66. **The Human Resources Development Operational Programme's** priority for the 2014-2020 development period is to foster equity, desegregation of children of Roma origin and/or of disadvantaged background and their inclusion in education.

67. The aim of the **"Pathways to higher education"** scholarship is to secure equal opportunities for students with disadvantages and multiple disadvantages, with a special emphasis on Roma students.

68. **The National Social Inclusion Strategy of Hungary** for the period of 2011-2020 includes the support of disadvantaged Roma students to obtain a degree by virtue of assisting and expanding the programme of Roma colleges for advanced studies.

69. In the course of compulsory education, positive attitudes have to be developed such as respect for equality, democracy, religious and ethnic diversity. The knowledge of the basic concept of anti-discrimination is included in the social participation elements of **National Core Curriculum (NCC)**.

70. Based on the Higher Education Act **preferential treatment in the form of a given number of additional points available in the admission procedure** (in 2015: 40 additional points) has been introduced for specific categories of persons, including applicants with disabilities, (socially) disadvantaged/multiply disadvantaged applicants.

71. **The Bursa Hungarica Local Governmental Scholarship Programme** is a further form of financial support based on the students' social situation. Bursa Hungarica Scholarships are partially funded by the local governments of the students' settlement and by the state.

72. Besides, socially disadvantaged and multiply disadvantaged students admitted to State-funded training in higher education can obtain a guaranteed amount (50% of the student normative defined in the annual State budget) of basic support and welfare.

Question no. 5 — Information on measures taken with regard to the Committee's recommendations (CCPR/C/HUN/CO/5) — paragraph 18

Increasing number of racially motivated verbal and physical attacks against Roma

73. Hungary does not collect data on racially motivated verbal and physical attacks against Roma. Only data on the registered number of hate crimes in general (Violence Against a Member of the Community, Incitement Against a Community) is available.[19]

Intolerance, discrimination and hate speech against Roma, Jews, asylum seekers, refugees and migrants

74. In order to guarantee the conflict-free co-existence in the local communities, the public policy staff of the police is continuously informed by the commanders how to manage conflicts in the minority groups.

75. The National Police Headquarters and the European Roma Law Enforcement Comradery Association support the project called "Initiative for developing the management and the prevention of the incidents related to hate crime". Within the framework of this project a training took place for commanders in 2015 (for 3 commanders from the 3 regions of Hungary) which aimed to acquire the theoretical and practical management of hate crimes.

[19] See Annex no. 2.

76. Besides, the National Police Headquarters and the National Roma Self Government signed a Cooperation Agreement on 16 September 2016 with the aim to ensure a conflict-free relationship between the police and the Roma community and to improve the dialogue between the parties (major topics: crime prevention, communication and cooperation).

The growing number of extremist organizations and vigilante patrols

77. See points 85-86.

Racial profiling of the Roma by the police

78. According to Act XXXIV of 1994 on the Police the police must act impartially. During profiling there is no data collection, data storage and data processing on ethnic and racial origin.

Vandalism of Jewish property and cemeteries

79. There is no data available on religion in the Unified Statistical System of Investigations and Prosecutions (ENYÜBS).[20]

Measures taken to increase the investigation and prosecution rate for racially motivated crimes

80. As all actions must be examined without exceptions the central criminal management body of the police did not and cannot take efforts in order to increase the percentage of investigations and criminal procedures. We can state that the Working Group Against Hate Crime performed a few professional trainings in 2016, which provide the managerial and subordinated staff with adequate knowledge.

Relevant statistical data on the number of complaints, investigations, prosecutions and convictions

81. The Unified Statistical System of Investigations and Prosecutions does not collect data on religion or ethnicity. Victims may reveal information on their ethnic background or religion voluntarily should they believe to have been offended on these grounds.

New legal provisions concerning hate crimes [21]

82. The Hungarian government is committed to offer efficient protection against hate speech for different social groups through criminal law legislation, as well. The new Criminal Code [22] (hereinafter: Criminal Code) deals in several sections with **crimes motivated by racism or hatred towards a protected group**: violence against a member of a community (Section 216 §), incitement against a community (Section 332 §), use of symbols of dictatorship (Section 335 §); and public denial of the crimes of national socialist and communist regimes (Section 333 §). By criminalizing violence against a member of a community and incitement against a community, the legislator offers protection for the freedoms and human dignity of communities, including national, ethnic, racial or religious groups, as well as certain other groups of the population. In the latter cases groups based on disability, gender identity and sexual orientation are *expressis verbis* indicated, however, the list is not exhaustive.

83. A new kind of criminal conduct has also been inserted into the Criminal Code entitled "Public Denial of the Crimes of National Socialist or Communist Regimes"

[20] See Annex no. 3 for statistics on vandalism in cemeteries.

[21] See also Points 21-27.

[22] See Act C of 2012 on the Criminal Code.

therefore it is now punishable to attempt to justify genocides or other crimes against humanity committed by national socialist or communist regimes.

84. The Government note that criminal offences motivated by racism in a number of cases qualify as an aggregated form of the offence to be punished more severely, while in other cases malevolent motivation or intent is to be considered only as an aggravating circumstance of the basic form of the offence.

85. Act CIII of 2016 amended the Criminal Code with regard to the criminal offence of Incitement against a Community by *expressis verbis* including incitement to violence (before only incitement to hatred was known by the Criminal Code), moreover, it refers not only to a certain group of population as target, but now indicates members of the given groups, as well. The amendment entered into force on 26 October 2016.

86. As concerns the establishment of **far-right organizations and their activities** a new crime had been introduced into the Criminal Code called the "unlawful activities concerning the pursuit of public security" (Section 352 §) criminalizing the conduct of those who are engaged in organizing activities purporting the illusion of maintaining public security and public order or purporting to maintain public security and public order without being authorized to do so by law.

87. Further, the operation of the Civil Guard has substantially changed in order to avoid abusive practices of such organisational structures potentially targeting certain minorities.[23] Besides, the new Criminal Code renders punishable to participate in the leadership of an association, or to participate in the operation in a manner capable of disturbing public peace of an association that has been dissolved by the court. Furthermore, it is also punishable to provide the conditions necessary for or facilitating the operation of such an association (Section 351 §). We also note that the relevant regulation has become stricter also with regard to administrative offences.

Specific protocols on how to investigate hate crimes

88. There have been trainings continuously on this issue for the police in 2014 and 2015, as well. Other than that, the preparation of the so-called list of indicators on the agenda of the Working Group Against Hate Crime is under progress.

Question no. 6 — Discrimination on the grounds of sexual orientation

89. As mentioned before, by criminalizing violence against a member of a community and incitement against a community, the legislator offers protection for the freedoms and human dignity of communities, including national, ethnic, racial or religious groups, as well as certain other groups of the population. In the latter cases groups based on disability, gender identity and sexual orientation are indicated *expressis verbis*.

Statistics

90. At the same time we note that the Unified Statistical System of Investigations and Prosecutions does not collect data on sexual orientation. Victims may give information on their sexual orientation voluntarily if they believe to have been offended on that ground.

[23] See Act CLXV of 2011 on Civil Guards and the rules of its activities.

C. Non-discrimination and ill-treatment of persons with disabilities

Question no. 7 — Measures taken in general

91. Article XV (2) of the Fundamental Law covers the principle of equal treatment; "fundamental rights are guaranteed by Hungary to everyone without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status". Article XV (5) provides that Hungary has special orders for protecting the rights of families, children, women, elderly people and disabled people.

The Free Sign Language Interpreter services, video-interpretation

92. The national network of the free Sign Language Interpreter service exists since 2009 in Hungary. The annual time limit of the free sign language interpreting service provided by the State is 36,000 hours with a maximum of 120 hours per person per year.

National Disability Programme

93. The National Disability Programme for the period of 2015-2025 makes references to the improvement of the situation of children with disabilities in its various intervention fields. In recent years, the rate of children with disabilities who received specialized child protection care and were placed under the care of foster parents has continued to grow.[24]

94. For the implementation of the National Disability Programme during the period of 2015-2018, "**a cross-sectoral working group**, including the involved civil parties was to be set up in order to elaborate a proposal for the supporting system for improving the accessibility of flats and residential environments and for the restructuring of the supporting system." The Inter-ministerial Disability Committee set up the working group on 2 December 2015.

95. As per Section 3 § (10) of Government Decree on the Action Plan to implement the National Disability Programme (1653/2015 (IX. 14.)), a national network of **disability coordinators** shall be set up and their activity shall be supported with recommendations and the presentation of best practices. Disability coordinators, available at every university department, give support to and coordinate the needs of students with disabilities or students with special needs.

Network of Family, Equal Opportunity and Volunteer Houses

96. Further, a so-called Network of Family, Equal Opportunity and Volunteer Houses (hereinafter: NFEOVH) is operating throughout the country. The Network consists of 19 county offices including one in Budapest. The most important mission of the offices is to take actions against segregation and discrimination, to lower the level of opportunity differences, and to shape public discourse to combat prevailing prejudices in society and to enforce social solidarity.

Promotion of the employment of people with reduced working capacity

97. Approximately 200,000 persons with disabilities, persons with damaged health and persons with reduced working capacity are employed within the framework of supported employment or, owing to the reforms of the system implemented in recent years, on the open labour market.

[24] December 2011: 44.1% - December 2013: 49.2 % - December 2014: 54.3 %.

98. The measures introduced in the field included a transformation of the employment rehabilitation system for persons with disabilities and persons with damaged health. While preserving permanent (social) and sheltered employment, the goal was to promote the employment of persons with reduced working capacity, to ensure working conditions which fall in line with their qualifications and health status, to develop their adaptation abilities etc.. Another aspect was to ensure the efficient and transparent use of the funds targeted to the objectives.

99. In addition to the aforementioned reforms, the complex assessment criteria of persons with reduced working capacity were redefined,[25] while the institutional system and the rules of procedures for receiving services were simplified.

Rehabilitative services

100. Within the framework of rehabilitative care, a person with reduced working capacity is eligible — for the rehabilitation period, but not more than three years — for rehabilitative services required for a successful rehabilitation, and a rehabilitation benefit in cash.

Disability services

101. A person with reduced working capacity is eligible for disability services if, on the basis of his or her health status, it is established that his or her employability could be restored with rehabilitation, however, certain conditions specified in the decree on the detailed rules of complex assessment are met.

Rehabilitation card

102. As of 1 July 2012, the Rehabilitation Card, a new form of support was introduced. Rehabilitation Cards are issued by the National Tax Authority for eligible persons with reduced working capacity. On the basis of the Rehabilitation Card employers are eligible for a tax benefit with regard to the social contribution tax.

Accreditation of employers employing persons with reduced working capacity

103. On 17 November 2012 Government Decree 327/2012. (XI.16.) entered into force offering a framework for the employers to apply for one of the two forms of employment-related supports (Transit employment; Permanent employment).

104. Besides, the employment of persons with reduced working capacity is also supported by a measure which specifies that employers with an average statistical staff number of more than 25 persons are obliged, to a minimum degree of 5% of the staff number, to employ persons with reduced working capacity (mandatory employment level). Otherwise employers are obliged to pay a rehabilitation contribution (currently, an amount of HUF 964,500 per year for each employee missing).

Social employment

105. As for disabled persons with reduced working capacity whose employment cannot be ensured within the framework of integrated employment, their right to work is ensured within the framework of permanent employment in protected conditions (social employment).

[25] 7/2012. (II.14.) of Ministry of National Resources Decree.

Programmes

- The annual "Buy to Help" Programme (Segítő Vásárlás Program) contributes to the extension of the employment of persons with reduced working capacity through promoting their products with presentations. The primary objective of the "Buy to Help" logo is to boost demand for quality products made by persons with reduced working capacity/persons with disabilities.
- Employers who undertake to improve continuously their practice related to the recruitment, employment and retainment of persons with disabilities can apply for the recognition of "Disability Friendly Workplace".
- The awareness-raising programmes entitled "The World is Better with Us" promote the integration of people with disabilities. Within the framework of the programmes, local governments have undertaken to increase the number of employees with reduced working capacity.

Health care

Ensuring equal access to public screening programs

106. For the inclusion of the largest possible portion of the population at risk, a nationally organized system of public screening has been established (breast screening of women aged 45-65 every 2 years; cervical cytology of women aged 25-65 every 3 years; colon screening of men and women aged 50-70). The goal of public screening is to halt the current tendency of increasing cancer incidence and to reduce the number of cancer deaths.

Equal access to health promotion

107. 61 Health Promoting Offices (HPOs) have been established in 2013 with the utilization of European funds. The offices have been operating with public funding since 2015 and new offices are to be established from 2017 on. The fundamental objective of the HPOs is to improve individuals' health through prevention of cardiovascular diseases, reduction of risk of cancer, and promotion of healthy lifestyles that influence early and avoidable mortality.

National Mental Health Strategy

108. The objective of the "Kopp Mária National Mental Health Strategy 2016-2020" draft, under Senior Management approval, is to support mental health promotion, prevention of mental disorders and restoration of mental health, at the level of individual, family and the broader community.

Implementation of the strategy on deinstitutionalizing social care institutions for persons with disabilities

109. In July 2011, the Hungarian Government adopted a strategy for 2011-2041 for the replacement of social institutional capacities providing nursing and care for people with disabilities (hereinafter: DI strategy).[26] The first big wave of the deinstitutionalisation consisted of six projects related to the conversion of care homes for disabled persons and psycho-social care homes into supported housing. The experiences and knowledge of these projects and the change in legislation of the first five years led to the revision of the DI strategy. The new draft DI strategy, currently under social consultation, determines the time interval of the implementation of deinstitutionalization as between 2016 and 2036.

[26] Government Decree No. 1257/2011. (VII.21).

110. The draft DI strategy puts emphasis on the heterogeneity of the target groups of deinstitutionalisation. The deinstitutionalisation of children with disabilities, elderly people with disabilities, persons with disabilities and addictions, homeless persons with disabilities and the families of persons with disabilities are also targeted in the draft strategy.

Question no. 8 — Voting rights

111. The new Fundamental Law has revised the previous automatic system of limiting (or in some cases denying) the right to vote of people with mental disabilities. Now the imposition of any restriction on voting rights of any person living with mental disabilities is subject to a court decision. The judge is required by law to take into account all circumstances that he or she finds pertinent in assessing the capacity of the person in question to exercise the right to vote. A similarly significant amendment concerns the assessment of the capacity of reasonable decision-making of a person, which takes into account his/her abilities in concrete fields including the exercise of the right to vote.

112. Moreover, as an alternative to guardianship, the institution of supported decision-making has also been introduced by the new Civil Code available for those living with a mild level of disability.

Question no. 9 — Alleged practice of forced sterilization

113. Based on the Act CLIV of 1997 on Healthcare, sterilization is not possible without the patient's consent, which should be given in the form of a written request claiming health related issues even if the concerned person has disability. If the patient is under guardianship a court decision is also required, however, the court can only approve the request when the application of other contraceptive method is not possible or not recommended due to health reasons, and if such decision meets the person's will, or the pregnancy would endanger the person's health or physical integrity.

D. Non-discrimination and ill-treatment of women

Question no. 10 — Measures to combat violence against women (CCPR/C/HUN/CO/5 para. 10)

114. Hungary's Fundamental Law covers all aspects of any form of discrimination including the promotion of equal treatment and equality between women and men — which principle is also enshrined in the Equal Treatment Act and the new Labour Code (hereinafter: Code).[27] The right to equal pay for equal work without discrimination on grounds of sex is expressly stipulated by the Code together with appropriate and effective remedies in the event of discrimination based on gender aspects. In Hungary the pension pay gap average is 16% while in the EU27 is 40%. Albeit there is no female minister in the government, the number of female ministers of state (6) and deputy secretaries of state (19) is relatively high. The proportion of medium-level women leaders in the ministries is about 49%. In the 2014 European Parliament elections 4 women (19%) had been voted for MPs. In 2014 among all parliamentary election alliances there were female politicians in the top 5 candidates. The ratio of women employed in management positions is 40% in Hungary which puts the country in the forefront in the EU. Similarly, 40% of leading positions in the public administration and of the advocacy leaders were women in 2012. According to the OECD's publication (2014) the ratio of female judges is among the highest in Hungary.

115. Further, the prevention of Roma girls' school-leaving program is planned to be implemented in the 2016/2017 academic year for the second time from domestic funding. It

[27] Act I of 2012 on the Labor Code.

may contribute to avoid early school leaving, help future employment, as well as contribute to improving quality of life and health.

116. "Tanoda" is a working community space disadvantaged compensation program, which consists of helping the disadvantaged, especially Roma pupils' catch up.

117. The Subcommittee on Women's Dignity as part of the Parliament's Committee on Culture was established in 2015 to deal with security of women and combating domestic violence as priority tasks.

New strategy on gender equality

118. Hungary hasn't got a new strategy. Our current strategy is valid until 2021.

Question no. 11 — Measures to combat violence against women (CCPR/C/HUN/CO/5 para. 11)

119. A new parliamentary resolution on the national strategy guidelines in relation to the fight against domestic violence has been prepared.[28] Accordingly, inter alia, Hungary pledges itself:

- To provide the necessary financial and human resources;
- To enhance the cooperation between the public and the non-governmental sector;
- To maintain and elevate the necessary number of shelters and half-way houses;
- To consider the special needs of victims of domestic violence during tribunal and other proceedings etc.

120. We further note on the 14th of March, 2014 Hungary has signed the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The ratification process of the Convention by the national legislation is permanently under way, under the coordination of the Ministry of Justice.

Reporting of cases

121. The Hungarian Interchurch Aid with the financial support of the Ministry of Human Capacities carried out a large scale media campaign entitled "Notice it!". On the one hand the programme's goal was to draw potential victims' attention to the signs of domestic violence and to help to face their situation. On the other hand the Government wants to encourage those affected by domestic violence and their environment not to be afraid to ask for help when identifying such situation. The campaign also continued during in 2015 and 2016.

122. In 2015, the Media and Infocommunications Commissioner issued a recommendation according to which actors of the media shall impart the telephone number of the National Crisis Telephone Information Service during their reports which has a relevance to the subjects of domestic violence or human trafficking.

Law on domestic violence

123. The crime of "relationship violence" was inserted into the Criminal Code with taking effect of 1 July 2013 (section 212/A §). The Criminal Code punishes violent behaviours that do not reach the level of physical violence, yet severely injure the victim's human dignity, or cause economic impossibility. At the same time, the new criminal

[28] 30/2015 (VII. 7) Parliamentary Resolution on the national strategic goals concerning the effective combat against domestic violence.

conducts ensure criminal law protection in such an early stage, that the investigative authority may only take action on the basis of a private motion - as only the victim of the conflict can judge whether or not he/she requires intervention from the authorities. Otherwise, initiating criminal proceedings is still not conditional on filing a private motion in case of conducts that qualify as a more severe form of the new criminal offence.

124. Creating a separate criminal law offence is justified mainly by the extremely vulnerable character of victims which circumstance also urged the extension of the list of victims that could fall under the concept of relatives as defined in point 14 of Section 459 § of the new Criminal Code, by including former spouses, former life-partners, custodians, persons under custody, guardians and persons under guardianship.

125. For realizing the commission of the crime, besides belonging to this special group of victims, the Criminal Code requires cohabitation or former cohabitation with regard to defencelessness and vulnerability of people resulting from cohabitation. Nevertheless, cohabitation is not required should the concerned persons have a child. An additional condition, for similar reasons, is that the committal must happen on a regular basis. In case of qualified form of the offence no private motion is needed.

Trainings

126. In 2014 a methodological guide titled '*Uniform principles and methodology on the identification and elimination of child abuse related to the child protection detecting and signalling system*' was published by the Ministry of Human Capacities and the Directorate-General for Social Affairs and Child Protection. The guidelines set in this guide determine tasks for the members of the signalling system for the whole process including detection, warning, signalling and intervention, as well.

127. Several other programs have also been implemented aimed at the trainings of law enforcement personnel (e.g. "Peacekeeping in local communities" program) and good practice of certain police departments had been published in guidelines.

State-run shelters

Shelters

128. A network of shelters specifically for victims of domestic violence operates in Hungary. At these institutions the victims of domestic violence, including their children, if any, may receive accommodation and complex care in case they are forced to leave their homes for the duration of 30 days which can be extended for an additional 30 days. These are characteristically the temporary family homes, the natural protective environment (family or friends separated from the perpetrator) or the other forms of institutional services (Secret Shelter House, Halfway Houses). Having children is not a condition for shelter service. There are currently fifteen shelters. These shelters are institutionally connected to temporary family homes, but their place of operation is confidential in all cases.

Secret shelter house

129. Hungary also operates a so-called Secret Shelter House (hereinafter: SSH) in Budapest as a special element of the national system offering services for the victims of domestic violence. It provides services (confidential accommodation, full range of physical assistance, complex crisis management) for those in a direct life-threatening situation. The Secret Shelter House receives clients exclusively through the National Crisis Telephone Information Service (NCTIS). The SSH operates with an elevated number of places to ensure free capacity for victims at all times and operates with an extended accommodation period of 6 months.

National Crisis Telephone Information Service

130. The National Crisis Telephone Information Service (NCTIS – OKIT in Hungarian) was established in Hungary, in 2005. The Service can be reached 24 hours a day, 7 days a week from any location in Hungary via a toll-free number. It provides information for the victims of domestic violence and human trafficking and coordinates the immediate emplacement of the victims to the Shelters, if necessary. The NCTIS directly initiated institutional emplacement in 367 cases in 2015. From these initiatives in 256 cases emplacement indeed had been realized (non-realized cases occur mainly because the victims find other solutions meanwhile) effecting altogether 759 persons: 252 women, 3 men, 504 children.

Halfway Houses

131. The fourth main element (after the NCTIS, the Shelters and the Secret Shelter House) in the line of the services for the victims of domestic violence are the Halfway Houses. The tasks of the Halfway Houses are to help the victim's reintegration into society having provided the initial service at the Shelter and to prevent secondary victimisation. To achieve these goals, these institutions provide long-term (maximum 5 years) accommodation and professional (mainly legal and psychological help) assistance for victims. Halfway Houses are operating in Hungary since 2006 - currently with 6 members.

E. Trafficking in persons

Question no. 12 — Measures to combat human trafficking (CCPR/C/HUN/CO/5 para. 12)

General measures

132. The framework for combating human trafficking had been laid down by the Government Resolution 1018/2008 on the National Strategy against trafficking in human beings in Hungary. It established a National Coordination Mechanism (NCM) and appointed a national coordinator.

133. The National Strategy against Trafficking in Human Beings for 2013-2016[29] has a comprehensive approach towards the issue of trafficking in human beings, and focuses on national actions. The strategy identifies five main priorities in the field of human trafficking: the operation of an appropriate and well-running victim identification, referral and protection system, efficient prevention, awareness building and awareness raising, the detection and prosecution of perpetrators; the protection of the rights and interests of plaintiffs and victims, enhancing coordination with the relevant government, semi-governmental and civil organisations involved, mapping opportunities for safe return and reintegration at the government level; designing supportive action.

134. Under the Program "Prevention of and Fight against Crime" (2012 ISEC General Call for Proposals of the European Commission) Hungary's tender was approved and a 24 months project was being implemented between 1 February 2014 - 31 January 2016. The project aimed to develop a transnational referral mechanism among Hungary, Belgium and the Netherlands which contributes to the assistance and safe return and referral of victims of human trafficking related to sexual and labour exploitation and facilitates transnational networking and trust building among professionals.

[29] Government Decree 1351/2013 (VI. 19).

Child protection

135. In terms of securing the rights and the best interests of the child one of the linchpins of the Hungarian child protection system is the operation of a child protection warning system in order to prevent and eliminate all forms of abuse of children and to detect and ward off factors endangering them. The operation and the organization of the detecting and warning system is the compulsory task of the family and child welfare services.

136. The Ministry of Human Capacities started a prevention program in 2012 to prevent young people from becoming victims or abusers in the future. So far the program has reached more than 3000 students. The expansion of the initial pilot program targeting the youth between the age of 14 and 18 is permanently under way (EFOP-1.2.1-15 "Védőháló a családokért").

137. In December 2014, the State Secretariat of Social Affairs and Social Inclusion of the Ministry of Human Capacities supported the activity of the Directorate-General for Social Affairs and Child Protection with a total amount of HUF 58,467,000 in the field of the development and introduction of a training programme intended to promote the identification and prevention of child abuse, as well as to enable programs to happen in the field of child prostitution prevention and to ensure that the necessary tools and trainings are available.

138. In 2014-2015, Károlyi István Children's Centre implemented two projects with the support of the European Refugee Fund. The EMA/2013/2.4.1 "Entry" program was aimed at preventing further victimization of unaccompanied minors, preventing their hospitalization, improving their feeling of safety, quality of life and the quality of reception conditions. The EMA/2013/3.5.5 "Home" program was a complex, multi-stage integration program aimed at the integration of concerned persons into the Hungarian society.

139. There also have been several trainings organized such as an awareness-raising training for the airport personnel on 14-15th October 2015, or a similar one organized for labour inspectors, consuls and also for judges.

Transformation of the data collection system

140. Data on criminal cases are recorded in the Unified Criminal Statistics of Investigation Authorities and Public Prosecution (Hungarian abbreviation: ENYÜBS). The Robotzsaru Neo system (operated by the Police) offers a separate module where proceedings launched on the basis of suspicion of human trafficking are to be signalled, so victims involved in such proceedings are possible to identify. The ENYÜBS system furthermore records data on the perpetrators in addition to the characteristics of the criminal action. Data on final judgments are collected in court statistics which is handled by the National Office for the Judiciary. The development of the national data collection system, as prescribed for by the National Anti-Trafficking Strategy, is ongoing and the project is financed by the Internal Security Fund of the EU.

Statistics

141. The Office of Justice ensuring a Victim Support Service has data on victims of human trafficking who have contacted any of the local victim support offices; yet it must be noted that the actual number of victims is supposed to be much higher than that. Also, there is currently no data available for the year of 2016. In 2015, Victim Support Service identified 8 persons who were presumably victims of trafficking in human beings. 7 out of the 8 victims were women and we do not have data about one victim. Regarding sexual exploitation, the most vulnerable group are women, out of 7 victims who were sexually exploited 5 were females. The victim of the sole labour exploitation case was also a woman. We do not keep record of the victims' ethnicity, refugee status, expulsion, migration,

disability or sexual orientation. As for the nationality of the victims, the supposed trafficking victims were Hungarian citizens in seven cases; in one case no information is available about the nationality of the victim. The exploitation took place in Hungary in each case.[30]

Assistance services

142. Pursuant to the Victim Support and Compensation Act 2005, the state provides the following services to victims:

- Instant monetary aid
- Information, legal support, emotional support etc.
- Issuance of certificate of victim status
- Witness care
- Safe house (shelters)
- State compensation for victims

143. In accordance with the National Strategy against Trafficking in Human Beings for the period 2013-2016, the Ministry of Human Capacities provides funding for two shelters specifically for the victims of human trafficking. Both Shelters are run by the same NGO, Chance for Families 2005 Foundation. The Transitory Shelters provide complex services and assistance only for the victims of TIP. Each shelter can provide services for 8 persons (if necessary the number of places can be elevated to 12) for 90 days. The duration of stay can be extended once with an additional 90 days on the basis of request. After that period the victim can be accommodated in other forms of services (e.g. Halfway Houses — see below — or Temporary Homes for Families).

144. In 2016 the Ministry plans to open two so-called Halfway Houses connected to the Transitory Shelters. The tasks of the Halfway Houses are to help the victim's reintegration into society after the initial service at the Shelter and prevent secondary victimisation. To achieve these goals, these institutions provide long-term (maximum 5 years) accommodation and professional (mainly legal and psychological help) assistance for the victims.

Law on human trafficking

145. As concerns the legal definition of trafficking in human beings, our new Criminal Code kept the provisions formerly in force unchanged and at the same time created a more severe form of the offence also requiring a specific purpose, namely, exploitation for realizing the aggravated form of the crime.[31]

146. Under the relevant provision trafficking in persons with the purpose of exploitation is punishable by 1 to 5 years' imprisonment. In the case of perpetration through a criminal organization, the maximum of punishment is 10 years' imprisonment. The penalty shall be imprisonment between 2 to 8 years if it was committed against a person held in captivity; by force or by threat of force; by deception; by tormenting the aggrieved party, against a person who is in the care, custody, supervision of or receives medical treatment from the perpetrator; for the unlawful use of the human body; by a public official; in criminal association with accomplices, on a commercial scale. Perpetrator shall be punished between 5 to 10 years imprisonment if e.g. the offence was committed against a person under the age of eighteen years; the offence resulted in danger to life. The penalty shall be

[30] For more statistics see Annex no. 5.

[31] See Section 192 §.

imprisonment between 5 to 15 years if e.g. the offence was committed against a person under the age of fourteen years; or under the age of eighteen years for the purpose of child pornography. The penalty shall be imprisonment between 5 to 20 years or life imprisonment e.g. if the criminal offence was committed against a person under the age of fourteen years and results particularly in great damage or danger to life and or if the offence was committed against a victim under the age of fourteen years for the purpose of child pornography.

147. The legal definition of human trafficking remains to be complemented in the system of the Criminal Code by provisions on what are referred to as parasite crimes, related to prostitution, or sexual crimes and provisions serving the protection of children (Forced Labour, Violation of Personal Freedom, Sexual Exploitation etc.)

F. Right to fair trial

Question no. 13 — Minimum age of criminal responsibility

148. The new Criminal Code lowers the age of criminal responsibility from 14 to 12 years. According to Section 16 § only in the most severe cases (homicide, voluntary manslaughter, battery, robbery and plundering) can children be punished provided that they are at least 12 years old on the day of the commission of the crime, and that they have the capacity to understand the nature and consequences of their acts. For less severe criminal offences, the minimum age of criminal responsibility remains to be the age of 14 years. Children who are at least 12 years old, but are less than 18 years on the day of the commission of the crime, are considered as 'juveniles' under the Hungarian law.

149. The main reason behind this amendment was that most children of this age finish their primary school studies and develop a physical and mental level that give ground for the criminal law to hold a person responsible for their actions. Nowadays, the biological development of children speed up, they develop both mentally and physically faster than before. Due to the information technology revolution, aggression spreads among children faster and more violently. Generally, children of this age are aware of the consequences of their actions and what is considered rightful and legal, but also know that they cannot be called to justice due to their age.

150. The strict, but justified, regulation is compensated by the provision that perpetrators, who are less than 14 but more than 12 years old on the day of the commission of the crime, cannot be subject to criminal punishments only to criminal measures.[32] In order to allow the courts to impose sanctions that are individualized to the specific needs of children perpetrators, the Criminal Code requires the court to order the probation officer to prepare a study on the living conditions of the child. Such studies contain information, inter alia, about the health situation, educational background and family situation of the child perpetrator, as well as, risk assessment of the child from a criminal prevention point of view.

Rules on juveniles' defence rights

151. In line with Act XIX of 1998 on criminal proceedings (hereinafter: CPC) police officers, prosecutors and judges dealing with child suspects and defendants are legally obliged to take account of the suspect's age and characteristics and to contribute to the child's respect for the law. The authorities and courts have to provide information to child suspects/defendants about their rights and obligations, the state of play of the procedure and the main characteristics of the given stage of the procedure.

[32] Criminal Code, Section 106 §.

152. During the **investigation phase** the defence counsel must be present and the parents or other *legal representative* (törvényes képviselő) of the child may attend. The child suspect may refuse to testify or to respond to questions, if the defence counsel is not present. To minimise the burden of judicial proceedings, Hungarian law allows for the referral of the criminal procedure to alternative procedures, including mediation.

153. The CPC also contains measures that are in place to support the child perpetrator during the **trial phase**. These measures include the requirement that the presence of the defence counsel is mandatory at the trial phase, also, the presiding judge may decide to hold the trial in camera, or even in the absence of the child if this is in the best interests of the child suspect.

154. The legal representative, adult caretaker or relative of the juvenile has to be guaranteed to be able to assist. In case of conflicting interests, the proceeding authorities shall immediately appoint a trustee who will proceed until the court of guardians assigns a guardian.

155. The participation of the defence counsel is obligatory in procedures against juveniles. The right to legal assistance of the juvenile can only be exercised effectively if the defence counsel is present not only during trials but even before the charges are pressed. For this reason the **draft CPC** makes it obligatory for the defence counsel to be present during procedural actions that directly serves the evidentiary procedure. Accordingly, the juvenile cannot be heard as a suspect, cannot participate in confrontation, presentation for identification, questioning on the scene or reconstruction without their defence counsel present. Moreover, the presence of the defence counsel is obligatory during court hearings adjudicating on coercive measures affecting the personal freedom of the juvenile.

156 Juvenile defendants can consult with their defence counsel without supervision either in person or through the means of telecommunications tools — in line with the general rules.

Question no. 14 — Legal assistance for arrested persons

Short-term arrest (up to a maximum of 12 hours)

157. As soon as a perpetrator is arrested by the police (or any other law enforcement authority) the person is informed about the reason of the arrest and is provided the possibility to inform a relative or any other person nominated by the detainee. At this stage the freedom of the detainee can only be limited in accordance with the purpose of the arrest; other rights such as the right to defence, legal aid shall not be limited in any way.

Arrest (up to a maximum of 72 hours)

158. The accused person can be arrested on the grounds provided for by the Criminal Procedure Code (CPC). In case the investigating authority orders the arrest of the person, his/her fundamental rights, such as the right to defence, must be respected. The participation of the defence counsel of a detainee is compulsory in criminal proceedings.[33] The arrested perpetrator must be interrogated within 24 hours from the initiation of the arrest (including the short-term arrest), and must be provided legal assistance before the time of the interrogation. Legal assistance is provided either by a defence counsel retained by the detainee or by a lawyer appointed by the proceeding authority. In both cases legal assistance must be ensured before the interrogation takes place.

[33] Section 46 § point b) of the CPC.

Alleged short notice given to lawyers

159. The notification has to take place in such a time and manner that defence counsel shall have actual possibility to appear at the interrogation[34]. In case the law enforcement authority fails to provide adequate proof that the notification took place in this manner the interrogation is void. However, the situation of short-term arrest and arrest may be exceptional where the interests of the criminal procedure require fast actions without undue delay. In any other case, where the urgency of the investigative action cannot justify such a notification, it must take place at least 24 hours before the interrogation or any other investigative action.

160. In order to provide clear legal basis for the described legal practice and proper guarantees, the draft CPC sets forth higher standards. According to the draft regulations normal time notification must take place at least 5 days before the interrogation or any other action. During the investigation, if the urgency of the investigative action justifies a shorter notice period, the notification takes place 24 hours before the action. Urgent investigative actions concerning the defendant shall be organised in a manner that the defence counsel is notified of the action at least 2 hours in advance. In any case, with the consent of the interested persons these time limits may be reduced.

161. The draft CPC also determines the rules for the procedure to be followed when the accused is arrested and in case the person has no defence counsel at the time of an interrogation. If the perpetrator is arrested or is in another form of detention, the investigating authority has to immediately appoint a defence counsel, should the perpetrator not have a retained defence counsel. This ensures that any detainee will actually have legal assistance from the start of the detention. The procedure also provides sufficient time for the defence counsel to contact the defendant, and to appear at the interrogation. When legal assistance is compulsory and the a defendant has no legal assistance, the investigating authority appoints and notifies the counsel without delay, and suspends the interrogation for at least 2 hours. Within this period the defendant also has the opportunity to consult his defence counsel, and to consent to the start of the interrogation or to deny testimony without the presence of the counsel.

G. Right to life, prohibition of torture and cruel, inhuman or degrading treatment, right to liberty

Question no. 15 — Homelessness

162. According to Article XXII Paragraph (3) of the Fundamental Law „[a]n act of Parliament or municipal decree may outlaw the use of certain specific sections of public areas for habitation in the interest of protection of public order, public safety, public health and cultural values." Several guarantees ensure that the restrictions introduced on the basis of this provision remain constitutional:

- Firstly, the prohibition can be enforced exclusively in the interest of the protection of public order, public safety and public health, as well as cultural values.
- Secondly, an important guarantee requirement is that the prohibition can be introduced only for a specific part of the public places: it is in violation of the Fundamental Law, for instance, if a local government establishes the prohibition for its entire area.
- Thirdly, the prohibition can be introduced exclusively in an act or a local government decree, that is, the Constitutional Court or the Curia is to be allowed to

[34] Decision no. 8/2013 of the Constitutional Court.

review the rules in any case, and repeal the regulations in violation of the above requirements.[55]

Question no. 16 — Alleged excessive use of force by the police

163. In accordance with the international regulations and the general requirements in the Fundamental Law, a wide legal guarantee system has been built up for the prevention and punishment of torture, inhuman or degrading treatment in Hungary. The legal definition of related crimes — such as abuse in official proceedings (Section 301 §), forced interrogation (Section 303 §), and maladministration (Section 305 §) had been inserted into Part XXVIII of the Criminal Code. [56]

164. The CPC defines a basic requirement among the general rules of procedural actions for courts, investigate authorities and prosecutors, saying that human dignity, rights of the individual, and rights of the deceased must be respected when performing procedural actions.[57]

165. Upon admitting an inmate into a penitentiary institution he/she must be informed how he/she can signal if he/she had been treated unlawfully. The hospital regulations of prisons contain the contact information of human right organisations; furthermore, detainees may file a report about their alleged unlawful treatment to reintegration officers, or to the warden in duty out of office hours, or to the security officer in duty.

166. Convicted persons and detainees being in detention under other legal titles may file a request in matters related to the execution of punishments or the conditions of detention, or may file a complaint against the decision delivered in the subject and shall be entitled to other remedies as per the relevant law.[58]

167. Furthermore, convicted persons and detainees being in detention may directly turn to the prosecutor responsible for supervising the execution of punishments, they may request a hearing conducted by the prosecutor, or may directly turn to the Commissioner for Fundamental Rights or to a co-worker of the Office of the Commissioner for Fundamental Rights responsible for performing tasks related to national preventive mechanisms.[59] It is also set forth that use of unlawful coercive means shall be reported to the prosecutor within 8 days, and should the use of coercive means cause a bodily injury or death it has to be notified to the prosecutor immediately.

168. Further, detainees have the right to request a personal hearing before the commander of the facility without specifying the subject of the notification or motion; or to contact him directly in writing and the law[60] also provides that the case file related to the enforcement of remedies has to be forwarded immediately to the addressee.

Statistics

169. See Annex no. 6.

[55] E.g. see decision no. 3/2016. (III.22) of the Constitutional Court; or decision no. Kfi.5.020/2014/6. of the Curia.

[56] Similar provisions can be found in Act CCXL of 2013 on the execution of punishments, measures, certain coercive measures and misdemeanour detention.

[57] CPC Section 60 § (1) and 77 § (2).

[58] Act CCXL of 2013 Section § 10 (1).

[59] OPCAT Art. 3.

[60] Decree of the Ministry of Inferior on the order of police detention facilities (no. 56/2014. (XII.5).

Question no. 17 — Independent Law Enforcement Complaints Board

170. Independent Police Complaints Board consists of board members, whom are elected by the Hungarian National Assembly for six years. The Members are jurists, during their procedures they are not allowed to proceed upon anyone's commands, the base of their procedures are guaranteed by the law. Act XXXIV of 1994 on the Police gives the most important legal ground of the Board's work. The basic aim of the Board is to investigate the complaint procedures on the basis of allegedly unlawful police activity or omission also including the violation of human rights.

Medical examination without the presence of law enforcement personnel

171. The medical and preventive treatment that suits the state of health of the convict shall be primarily taken care of within the penitentiary system. The convict can use the service offered by external health care institutions subject to the payment of a fee and only if the commander of the penitentiary institutions authorises so; the convict advances the probable costs and the health care institution accepts giving the service.

172. Upon admission of the detainee the authorities shall enter every marks of injury visible on the detainee into the documents. If there are visible marks of injury on the detainee or there is a suspicion of mistreatment, or they say that they got injured then the authorities shall immediately take action to take diagnostic results and record it into the minutes. A copy of the minutes accompanied by the diagnostic results shall be forwarded to the authority responsible for the escort of the detainee to the designated place and to the prosecutor supervising the legality of the procedure. The procedure is the same (taking minutes and diagnostic results) when the detainee indicates mistreatment during the deprivation of liberty.

173. As a general rule, during the medical examination of the detainee, the attending police officer shall be present in order to prevent escape, especially in case of external health care institutions, and to ensure the safety of the health care personnel. Usually the doctor or the psychologist determines whether the presence of the guard is indeed necessary, unless former events give due cause for a mandatory presence. In certain institutions the presence of the guard may depend on the routine practice of the institution.

Question no. 18 — Pretrial detention (draft CPC)

174. Please note that Act CLXXXVI of 2013 has not brought any changes regarding this type of detention. However, the draft CPC will entail considerable changes to coercive measures affecting personal freedom, especially pretrial detention. Pretrial detention will be clearly the last resort in terms of ensuring the aims of coercive measures, and will be available only if these aims cannot be achieved by any less restrictive measures. Criminal supervision is reorganised as a proper and actual alternative of pretrial detention. Additional measures may be used flexibly to ensure that the defendant complies with the rules of criminal supervision, such as technical surveillance device or bail.

175. As concerns measures taken to reduce the application of pretrial detention the Government note that several trainings have continuously been organized in order to provide proper training for the law enforcement personnel.

Short-term arrests (draft CPC)

176. As concerns short-term arrests, please note that the CPC allows for its imposition and sets its maximum duration in 8 hours with the proviso that it may be extended by an additional 4 hours.

Statistics

Number of pretrial arrests ordered

Year	*Total*
2011	**4 453**
2012	**4 340**
2013	**4 993**
2014	**3 947**
2015	**3 629**
2016	**3 063**
Total	**24 425**

Notification of families

177. The CPC prescribes for the notification of family members or other persons indicated by the defendant on the fact of short-term arrests and pretrial detention.

Question no. 19 — Alternatives to the deprivation of liberty in case of misdemeanours

178. Since January 2014 mediation is also possible in misdemeanour cases. In cases of juveniles, mediation is always available whereas in cases of adults mediation is only available when the misdemeanour committed may be punished with imprisonment. Specially trained probation officers act as mediators. The aim of the mediation is to facilitate conflict resolution between the victim and the perpetrator and to place the latter in a position in which he/she faces the consequences of his/her act and take responsibility. On the other hand victims may experience real recovery and an appropriate restitution can be achieved. Number of cases in 2015 was 2289 according to the data available at The Hungarian Probation Service.

Conversion of non-payment of fines to confinement

179. According to data from the National Office for the Judiciary on the confinements converted from non-payment of fines, there is no increase in the conversion of non-payment of fines to confinement. The number of confinements divided by years is the following:

In 2014: 173.450

In 2015: 143.970

Between 1 January - 30 September 2016: 97.938

Question no. 20 — Special Security Regime Unit and the Special Security Unit

Special Security Regime Unit

180. The placement to Special Security Regime Unit and Special Security Unit can be applied as a security measure in order to keep the order of the execution of punishments and measures in line and to preserve the safety of detention. A convict can be placed to such units if with regard to their past records, the committed crime, the time to be served, their behaviour and informal contact system, their connection to the safety and order of the penitentiary institution, as well as their personal circumstances, it is inferred for a strong reason that such person is capable of preparing, or has already attempted or committed an act or a crime seriously violating the order and security of the penitentiary institution, or

that they will behave or already have behaved in a way which endangers the life or health of others or their own or property, or have an openly or concealed aggressive temper.

181. The placement into a safety cell or a unit can be ordered by the commander of the penitentiary institution in a reasoned decision for a maximum of three months, which can be extended by three months on each occasion but the overall period may still not exceed one year. Thereafter, the national commander delivers a reasoned decision on the extension of the period of the placement into a safety cell — on each occasion — maximum by six months or delivers a reasoned decision on the placement of the convict into a safety unit for a maximum of six months or the extension thereof — on each occasion — by six months. When passing a decision on the placement of the convict into safety cell or unit or during the reconsideration of such a decision the convict shall be heard. The convict may file a request for review with the court against the decision of the commander of the penitentiary institution or the national commander. Convicts may also be placed in a safety cell or unit for their own protection.

182. The rules of the execution of placement into safety cell or unit differ according to the safety level of the penitentiary institution where the imprisonment is served. The convict who is placed into a safety cell or unit, inter alia,

- Shall be under constant guarding and supervision,
- Shall be able to move within the territory of the institution with permission and under supervision, his cell shall be kept closed,
- Shall communicate with visitors, as a general rule, in security visitation booth or via safety instrumented technical means,
- Shall work in the safety call or unit or at a place designated by the commander,
- Shall be allowed self-education, different rules for cultural, sport-related and leisure time activities apply,
- Shall be able to consult with a clergyman in private, and shall be able to participate at collective spiritual practice with the permission of the commander,

Special Security Unit

183. Long term prisoners (life imprisonment, imprisonment for more than fifteen years) may be placed to special security units and treated specifically, if they need special preparation before introducing or re-introducing them to the community taking into consideration their behaviour, their capability to cooperate during imprisonment, their stand on the order and security of the institution and their personal security risk assessment. The Admission and Detention Committee shall decide on the placement of a convict into such unit. The decision shall be reviewed every three months, and shall be terminated immediately if the conditions thereof ceased to exist. The convict shall be heard before and during the decision-making process and the decision shall be communicated to the convict in a written form.

Question no. 21 — Solitary confinement

184. Solitary confinement may last for 30 days, but only for 25 days in strict regime prisons, for 20 days in medium regime prisons and for 10 days in low regime prisons during which it can be permitted for the detainee to work or to take part in education. If the inmate work solitary confinement may last for 20, 15 or 5 days according to the different regime prisc... This cannot be applied for pregnant women or for women with their child. Solitary confinement may last for 10 days in the medium regime prison for juveniles and for 5 days in the low regime prison for juveniles. Juveniles being punished with solitary

confinement cannot be banned from taking part in school education and in reintegration programs.[41]

185. When a disciplinary punishment/measure is ordered appeal must be ensured. During the execution of the disciplinary punishment the inmate retain his/her right that promote the continuous contact with family, with legal representatives; furthermore practicing religion and participation in education is also assured.

Life imprisonment without the possibility of parole — pardon procedures

186. The European Court of Human Rights held in Magyar vs. Hungary (73593/10) that a whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. However, under the Hungarian system, domestic legislation did not oblige the authorities or the President of the Republic to assess, whenever a prisoner requested a pardon, whether his or her continued imprisonment was justified on legitimate penological grounds.

187. Therefore, the legislator introduced a new kind of procedure for clemency in case of life prisoners without parole to be conducted ex officio.[42] The new procedure does not prevent a convict from filing a request for presidential clemency any time he/she wishes to do so. In order to conduct this new procedure two conditions have to be met: the convict consents to it and he/she has served at least 40 years. The law provides for setting up a so-called Clemency Committee consisting of judges of the Appeal Courts. The law also determines those factors to be considered by the Committee during the procedure such as the behaviour of the detainee during of his/her term of imprisonment, his/her personal or family background etc.. The Committee issues its views with a detailed reasoning, which obeys the minister, thus he/she shall refer these views with the same content to the President. The document shall be forwarded to the detainee, as well. Should the President decline to grant clemency, the procedure shall be reinitiated in every two year until the detainee will have served his/her sentence.

Question no. 22 — Prison overcrowding

188. The European Court of Human Rights delivered a so-called pilot judgment in the case of *Varga and others v. Hungary* (14097/12) on the basis of which the Government of Hungary was to submit an action plan to the Committee of Ministers responsible for the execution of punishments setting out the measures to be introduced in order to cease prison conditions constituting inhuman, degrading treatment of prisoners.

189. One of the measures contained in the action plan included infrastructural expansions. Through new-built constructions and the expansion of old facilities 6.207 extra places will be created for accommodating prisoners by 2019. Besides, legislative actions will also be introduced inserted in the Act on the execution of punishments, taking effect on 1 January 2017.

190. As preventive legislative measures, complaints may be filed with the commander of the penitentiary institution on the basis of the overcrowded nature of the facility. The commander shall take the necessary steps to improve or compensate the living conditions violating fundamental rights of the convict by e.g. placing him/her into another cell or granting more time spent in open air, granting more visitation time or the frequency thereof. If necessary, the commander can initiate moving the convict to another penitentiary institution meeting the necessary detention conditions, the decision thereon can be reviewed

[41] Act CCXL of 2013 on the imposition of punishments.

[42] Act CCXL of 2013, Section 46/A-H §.

by the court. This legal remedy may only be applied after having finished the planned infrastructural developments.

191. Compensation proportionate to the injury resulting from the overcrowded conditions may also be asked for. The convict or person detained on other grounds is entitled to indemnification for damages that occurred due to the lack of living space as prescribed for or other violation of rights arising from conditions constituting torture, inhuman or degrading treatment. The amount of compensation is determined by the judge responsible for the execution of punishments according to the days spent under conditions violating Article 3 multiplied by the daily rate. The daily rate shall be set between 1200 and 1600 HUF. This gives enough room for the judge to consider the circumstances of the case.

192. The scope of reintegration custody (electronically monitored pre-parole home detention) will also be extended, meaning that its application will be available in more cases and for a longer period of time thereby reducing the time of incarceration and the number of prisoners.

Measures taken to improve health services in prison facilities

193. For the sake of the proper health care of the inmates medical instruments (defibrillator, EKG machine, dentist chair) have been improved in prisons and prison hospital last year and this year, too. A great achievement is that there is a psychologist working in every prison to ensure psychological care.

194. Epidemic screening (hepatitis, HIV, TBC) and treatment of inmates who belong to risked groups are of special priority.

195. Catering in prisons is realized according the determined rules and standards of Order no. 37 of 2014 of the Ministry of Human Capacities. Institutes where there are detained patients, diabetic professionals coordinate the food-therapy of the inmates. Other prescribed diets are also composed by diabetic professionals in the prisons.

Non-custodial preventive measures and statistics on their practice

196. The prison service does not perform preventive measures as such. These tasks belong primarily to the guardians unit of county justice departments of governmental offices. It is important to emphasize that tasks of those guardians differ from the tasks of the guardians of the prison service. These are basically the alternative sanctions and measures, such as execution of preventive guardianship in case of children; execution of guardianship ordered for the delay of accusation in the prosecution phase; guardianship applied in case of probation or suspended sentence in the trial phase etc.

Reintegration custody

197. An alternative sanction during the period of deprivation of liberty is the so-called reintegration custody, which came into force with the Penal Code in 1 April 2015. Perpetrators of small crimes (who have been detained for the first time, and for a non-violence crime spending in low or medium regime prison not more than five years) have the possibility to spend the last six months of their time with an electronic tagging system in a place determined by themselves and approved by the law enforcement judge. By introducing this new sanction law enforcement tools are significantly widened out in the respect of progressive measures, normalization, gradation, minimization of bad effects and successful social reintegration. Furthermore, this is a new legal tool that is able to reduce the crowding of prisons.

198. Other non-custodial preventive measures may be: imposition of bail, house arrest, restriction on movement or restraining orders.

Alternatives to custodial sentence

Community service

199. Offenders sentenced to community service by the court have to do work free of charge for the benefit of the public for 48-312 hours. The tasks related to the practical implementation of community service are consigned to the probation officers by the legislator, while the decision-making concerning the individual offender falls within the prison judge's competence. Therefore, it is the probation officer's task to find the potential workplaces, to draw these into co-operation, to assign the workplace, to arrange the fulfilment of the sentence, and to supervise the implementation continuously. With regard to the issue of converting the sentence to imprisonment, and other issues concerning its implementation (e.g.: suspension etc.), we note that the probation officer may make proposals, but only the prison judge has decision rights.

200. Statistics on community service[43]

Probation supervision

201. The aim of probation supervision, lasting minimum for one year but in most cases for two years, is to reduce the risk of recidivism under the control and with the support of the offender during the so-called probation period determined by the court. In Hungary, probation supervision is supplementary as it is connected to some other sentence or measure.

202. The probation supervision is implemented on the basis of a probation plan, which determines the goals to be achieved in a particular case, the potential means for that, and the circumstances threatening these objectives. In each individual case the probation officer meets the client at intervals specified in the probation plan, usually every month, hears the changes that occurred in the client's lifestyle or living circumstances, checks the fulfilment of the behavioural rules, and if necessary, provides advice or assistance for job search, life skills, health, social or any other problems concerning social re-integration.

203. Statistics on ordering probation supervision[44]

	Mandatory	*Compulsory cases of ordering*
Postponement of accusation	Prosecutor	Juvenile
Deferred sentence	Judge	Juvenile
Suspended custodial sentence	Judge	Recidivist, juvenile
Temporary release from reformatory institution	Prison judge	Juvenile
Restitution work	Judge	juvenile

204. Other alternative measures may be: fine, public work, banning from profession, banning from driving, expulsion, banning from the visiting of sport events.

[43] See annex no. 7.

[44] For more statistics see Annex no. 7.

Inter-prisoner violence

205. In order to minimalize the number of violent cases reintegration officer, psychologist, psychiatrist, priest and probation officer works together with the inmates in prisons. They organize individual and group programs, trainings, sport activities for spending their free time usefully, which lessen the intention of committing such action. When assigning prisoners to their place of detention prison staff takes into account the characteristics of the inmates. In case of violent activities prisons make a report to the competent authority. Prison conditions in this regard are continuously being examined by the prosecutor responsible for legal control of the penitentiary institutions.

Somogy County Remand Prison

206. When assigning prisoners to their place of detention special attention is given to the aim of preventing unlawful, degrading treatment thus newly admitted and victim-type (sexual offenders, first time in prison, weak and elderly people) inmates are placed in smaller cell communities.

207. Reintegration officers are responsible for checking the activities and mood of inmates in their cells on a daily basis. They ensure a forum for inmates to express their requests, problems in the framework of an individual hearing (psychologist, reintegration officer, health care, priest). In order to make the violent actions and suicidal attempts of inmates in the cells visible, the prison applies peep holes. They try to moderate the isolation and bad effects of the prison by organizing different programs and activities.

Sopronkőhida Strict and Medium Regime Prison

208. Psychologist, professionals, reintegration officers having contact with the inmates are paying special attention to prisoner's communication and problem handling between each other during the individual and group meetings. Increasing the number of prison staff has also been among the measures taken so that to maintain order especially in the dormitory area. The development of a camera system is also under progress, 70 new cameras help prison officers in coordinating the movements of the inmates and the prevention of violent action against each other.

H. Refugees, asylum seekers, protection of children and the rights of the child

Question no. 23 — New amendments to the asylum legislation

209. The latest significant amendment of the Asylum Act [45] effective from 1 June 2016 implemented the following legislative changes:

- The conditions of refugee status and the status of beneficiary of international protection that has been provided in a procedure started after 1 June 2016 will be revised at least every 3 years.
- From 1 June 2016 refugees and beneficiaries of international protection may only be provided accommodation and services by the facilities of the asylum authority for a maximum of 30 days following the announcement of their recognition.
- The procedure regarding tolerated status ("befogadott") has been transferred to the competence of the asylum authority (from the competence of the alien policing

[45] Act LXXX of 2007.

authority). In case the need of tolerated status occurs in an alien policing procedure the alien policing authority informs the asylum procedure to conduct a procedure.

Legal remedies

210. Asylum Act. S. 31/C provides that

(2) There are no legal remedies against the decision ordering asylum detention or the use of a measure securing availability.

(3) However the person seeking recognition may file an objection against an order of asylum detention or the use of a measure securing availability.

(4) The objection shall be decided upon by the local court having jurisdiction at the place of residence of the person seeking recognition within eight days.

(5) Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated.

Allegedly vague grounds for detention of asylum seekers

211. Grounds for detention comply with the Standards for the Reception of Applicants for International Protection. These are defined by the Asylum Act (Section § 31/A) since 2013 and provides as follows:

"(1) The refugee authority can, in order to conduct the asylum procedure and to secure the Dublin transfer — taking the restriction laid down in Section 31/B into account — take the person seeking recognition into asylum detention if his/her entitlement to stay is exclusively based on the submission of an application for recognition where

a) the identity or citizenship of the person seeking recognition is unclear, in order to establish them,

b) a procedure is ongoing for the expulsion of a person seeking recognition and it can be proven on the basis of objective criteria — inclusive of the fact that the applicant has had the opportunity beforehand to submit application of asylum - or there is a well-founded reason to presume that the person seeking recognition is applying for asylum exclusively to delay or frustrate the performance of the expulsion,

c) facts and circumstances underpinning the application for asylum need to be established and where these facts or circumstances cannot be established in the absence of detention, in particular when there is a risk of escape by the applicant,

d) the detention of the person seeking recognition is necessary for the protection of national security or public order,

e) the application was submitted in an airport procedure, or

f) it is necessary to carry out a Dublin transfer and there is a serious risk of escape.

(1a) In order to carry out the Dublin transfer, the refugee authority may take into asylum detention a foreigner who failed to submit an application for asylum in Hungary and the Dublin handover can take place in his/her case.

(2) Asylum detention may only be ordered on the basis of individual deliberation and only if its purpose cannot be achieved through measures securing availability."

Alternatives to detention

212. Section § 31/H of Asylum Act provides that:

"(1) The refugee authority shall ex officio examine whether conditions of asylum bail prevail. If the availability of the person seeking recognition may be secured through asylum bail, the refugee authority shall make a decision on this.

(2) The refugee authority may at any point of the proceedings authorize the deposit of asylum bail."

213. Employing alternatives to detention has a rare practice as applicants do not have the available financial funds determined by law on which basis the payment of bail as an alternative for detention could be ordered. In 2016 (01.01.2016. – 10.31.2016) detention was ordered in 2604 cases and from those in 280 cases was bail paid. In 2016 in 318 cases bail was not refunded because the applicant's whereabouts became unknown. (Same applies for those bail payments that were inherited by the State.)

Detention for allegedly lengthy periods

214. Section § 31/A of Asylum Act provides that

"(6) Asylum detention can be ordered for a maximum of seventy-two hours. The refugee authority may propose the extension of the asylum detention beyond seventy-two hours at the district court competent for the location of the detention, within 24 hours of ordering it. The court may extend the duration of the detention by sixty days at the most, which duration can be extended upon a proposal from the refugee authority for another sixty days at the most. The refugee authority may submit a motion to extend the detention several times with the proviso that the full duration of the detention cannot exceed six months. The motion for an extension shall be received by the court at least eight working days before the due date of the extension. The refugee authority shall be required to state the reasons for its motion.

(7) Asylum detention shall last no longer than six months or, in the case of a family with minors, thirty days."

215. The average duration of detention in 2016 was 53 days.

Measures taken to secure well-founded decisions

216. There are numerous legal safeguards to ensure well-founded decisions and adequate procedures, for example:

- The authority's legal obligation is to explore the facts of the case, to assess and examine all facts and circumstances that may be of relevance during the asylum procedure, even by way of involvement of experts, and to examine and assess the relevant and up-to-date information on country of origin.
- Judicial review procedure may be requested by the applicant.
- There is a free legal aid provided for the applicant upon his request during the asylum procedure and the judicial review procedure.
- Quality checking of asylum decisions are provided for by the Litigation Unit of Refugee Affairs Directorate of OIN (Office of Immigration and Nationality).

Question no. 24 — Implementation of the migration strategy

217. The aims set out in the Hungarian migration Strategy have been implemented through the National Programme for 2014-2020. The resources of Asylum, Migration and Integration Fund (hereinafter: AMIF) are managed via calls for proposals that are published in accordance with the National Programme.

Sufficient space in temporary facilities

218. There are no temporary detention facilities in Hungary. Detentions are carried out in three facilities, located in Békéscsaba, Kiskunhalas and Nyírbátor. All three facilities have a reception capacity of 790 people. As of November 2, 2016 267 people were detained and there were 523 free places.

Measures to improve detention conditions (CCPR/C/HUN/CO/5, para. 15)

219. The current Asylum Act refers to the possibility of family detention, however, in Hungary mostly single adult men are being detained. For families there is a separate building at the detention facility located in Békéscsaba where basic cohabitation conditions are provided. In the detention facility a minor applicant has access to a playpen or other educative programmes provided by a teacher specialized in child pedagogy and/or a social worker. In case a minor applicant reaches the school age, the detention facility immediately contacts the competent school district of the Klebelsberg Institution Maintenance Center. The social workers and their assistants are organizing sports activities and cultural programmes. They are taking care of the school enrolments of minor applicants, organizing sports and cultural events and following up with the changes of the applicants' health condition.

220. Each detention facility has a physician's office where on weekdays, doctors, especially internists, primary health care physicians) examine the detained applicants, furthermore there is also a registered nurse who is available 24/7. According to the current regulations the detention facilities provide basic healthcare. In case of need a specialized physician is also available. If during detention a social worker, registered nurse or a physician notices any marks on the body of the applicant that could indicate rape, torture, inhuman or any violent treatment he or she could have suffered in his/her country of origin or beyond, a psychiatrist, psychologist or a specialized physician will be immediately contacted for further treatment.

Question no. 25 — Age assessment of asylum seekers

221. Based on § 31/B of the Asylum Act asylum detention may not be ordered in case of an under-aged applicant if she/he is unaccompanied. If the unaccompanied minor cannot prove his/her age with an original document, the police will send a primary medical opinion on this issue to the asylum authority.

222. Should there be a discrepancy between the allegations of the applicant and the medical results, the refugee authority present the medical examination to the applicant and offers him/her the opportunity to rebut the outcome. Should the foreign person be considered to be an adult by the forensic medical expert, the administrative procedure will be conducted as per the general rules on adults. Should the person of foreign origin be considered to be a minor by the medical expert, the asylum authority terminates the detention, and relocate him/her into the facility of child protection (Section§ 31/A (8)). The applicant may also file a request for judicial review on that very basis. If there is a suspicion of abuse of right with regard to the asylum procedures, he or she will be educated about the provisions of the Asylum Act and the burden of proof lies with the applicant to certify his/her age.

Placement of unaccompanied minors

223. According to the current practice unaccompanied minors are placed at the child protection facility in Fót. In those cases in which a medical examination has determined that the unaccompanied applicant is a minor, he or she will be placed into a child protection facility (foster home/boarding facility). This means that these applicants are not being

placed into a reception facility managed by the asylum authority. As per the current Asylum Act those applicants who require special treatment, including unaccompanied minors, shall have free access to medical treatment and services, including rehabilitation, special psychological examinations and psychotherapy sessions — based on their personal circumstances and health condition.

Question no. 26 — Allegedly deliberate non-registration

224. The asylum authority fully reviews each asylum application.

Alleged mistreatment by law enforcement officials

225. Allegations on police mistreatments are groundless. Each claim is being reviewed by the State Attorney's General Office.

Alleged insufficiency of measures taken against smugglers of migrants

226. As per the recent report of the Office of the Police High Commissioner until October 2016, 226 smugglers have been arrested, from which 6 smuggler groups have been detected and investigated. Currently there are 8 groups under criminal investigation. The cooperation in criminal matters is exemplary between the EUROPOL, Serbia, the Czech Republic, Slovenia and Austria. Therefore, allegations questioning the sufficiency of measures taken in this regard are fictitious.

I. Freedom of expression and association, and the right to participate in public life

Question no. 27 — Mass Media Act and Press Freedom Act (Section 12 § and 13 §)

Press readjustment

227. Regarding the right to press readjustment (sajtó-helyreigazítás) Section 12 § (1) of the Freedom of the Press Act contains detailed provisions: *"Where published media content disseminates false facts or distorts true facts about a person, the person affected shall be entitled to demand the publication of an announcement to clearly identify the false, distorted and/or unfounded facts of the communication and indicate the true facts."*

228. The right to press readjustment provides for the protection of personality rights. Further, Act III of 1952 on Civil Procedure also contains relevant provisions for further legal remedy in case the request for press readjustment had been denied.

Obligation to provide information

229. As concerns Section 13 § of the Freedom of the Press Act the Government stress out that the obligation to provide information is a general requirement towards the media sector as a whole connected to the general right to information. A detailed obligation to provide information concerns only public media service providers and media service providers with significant powers of influence. However, that obligation does not entail any disproportionate restriction of the editorial freedom.

The provisions on the information activities had been examined by the Venice Commission which body did not challenge the legislation in force.[46]

[46] 798/2015 Venice Commission opinion, para. 48.

Balanced coverage

230. The "requirement of balanced coverage"[47] exists in the Hungarian legal system since 1996 with a solid case law developed on the matter. The state party notes that similar obligations are known also in other European countries. E.g. Article 319 of the Communications Act of the United Kingdom contains the requirements of "due impartiality" and "due accuracy". The obligation partly flows from the Fundamental Law prescribing for the diversity of the press.

231. In case of the infringement of the requirement of balanced coverage administrative proceedings can be initiated against media services either by "the holder of the viewpoint that was not expressed" or the viewers/listeners, in other words by anybody. The Media Authority shall have no such right ex officio and as concerns the nature of sanctions the State Party notes that no fine can be imposed. The Authority may only require the media service provider to have the announcement defined in the administrative decision published, or to provide the applicant with an opportunity to publish its missing standpoint.

Perception on the Media Council and the National Media and Info-communications Authority

232. As concerns the members of the National Media and Info-communications Authority Hungary note that its president is appointed by the Head of State for a term of nine years on the recommendation of the Prime Minister. This method is in line with the definition of „democratic" way of appointment. The rigorous professional selection criteria vis-à-vis potential candidates for the Presidency of the Media Authority safeguard that the choice is based on professional suitability.

233. The rules of nomination ensure that the members of the Media Council are appointed after reaching a high level of political consensus. The Media Council comprises five members and passes its decisions by a majority of votes. The Media Council is elected by a qualified two-third majority of the Parliament requiring agreement with the parties of the opposition. Members of the Media Council cannot be instructed, cannot be recalled and are independent in all respects. Moreover, strict conflict of interest rules apply to the members. By 31 May of each year, the Media Council shall submit a report to the Parliament to give account of its activities for the previous year. The consolidated budget of the Authority shall be approved by the Parliament, however, the Authority is financially independent.

234. The length of the mandate (9 years) is counterbalanced by the fact that the chairperson and members of the Media Council may not be re-elected, the President of the Media Authority may not be appointed for a second term. For the sake of "keeping distance" from the Government and the Parliament, the president and other members hold their mandates for a term extending beyond a parliamentary session.

Proceedings against media services

235. The Media Council determines the legal consequence to be applied in case a violation of the law had been established in its decision:

- Warning
- Order in case of minor infringements and repetition cannot be concluded;
- Financial sanctions

[47] Section 12 § (2) of the Media Act.

- Removal of the service.[49]

Licence of the radio station Klubrádió

236. The 12-year right of Klubrádió Budapest to provide media services on the 95.3 MHz frequency expired in 2011, however, Klubrádió continued to supply media services continuously until the issued new tender procedure was effectively concluded. In December 2011 the Media Council announced Autóradió Kft. as the winner. Klubrádió challenged the decision in court successfully and the Media Council entered into an administrative contract with Klubrádió on 2 May 2013 for a district commercial media service to be provided in Budapest on 95.3MHz. (We note that Klubrádió could not have brought its case to any courts before 2010 as no judicial review was available as a legal remedy as per the then effective laws.)

237. Simultaneously, Klubrádió won another tender procedure for a different Budapest frequency (Budapest 92.9MHz). However, no broadcasting contract was concluded due to the continued existence of the conflict of interests referred to above. In order to eliminate the conflict of interests, the parties agreed, in compliance with a court decision, to terminate the above contract with regard to the right to provide media services in Budapest, on 95.3MHz frequency previously used by Klubrádió.

238. In its decision adopted in February 2014 the Media Council proposed the execution of the above agreement on terminating the previous contract and at the same time on giving effect to the contract with regard to the right to provide public media services in Budapest, on 92.9MHz frequency on 13 February 2014, as requested by Klubrádió.

239. Thus, Klubrádió has never lost its broadcasting licence and that it has been operating continuously over the last few years. At the moment it uses a public frequency with a reception area in Budapest, for which it does not have to pay anything to the state.

Question 28 — Alleged pressure on public media

240. The Freedom of the Press Act explicitly contains that *"[f]reedom of the press embodies sovereignty from the State, and from any and all organizations and interest groups."* Section 3 § of the Media Act states that the content of the media service and the media product may be determined freely, but the media service provider and the publisher of media products owes responsibility to comply with the provisions of this Act.

241. According to Section 7 § (2) the sanctions prescribed in labour regulations, and those arising from other forms of employment relationship shall not apply to journalists, editors etc. if they refused to carry out any instruction given in violation of editorial and journalistic freedom of expression.

242. With regards to the protection of journalists' sources, Section 82 § (6) of the CPC applies. This provision requires that: *"The court can order the media content provider, a person employed thereby or a person being in other legal relationship to work therewith to expose the identity of the person giving information in connection with the media content service activity only if knowing the identity of such person is indispensable in order to investigate a criminal offence punishable by three or more years of imprisonment, the evidence expected by this person's testimony cannot be substituted, and furthermore, the interest to detect the criminal offence – with regard to the special gravity of the crime – is so vital that it unequivocally exceeds the interest to keep the information confidential."*

[49] Section 186-189 of the Media Act.

243. With regards to the matter of limitation of the right, the Fundamental Law prescribes for respecting the principle of proportionality formulated in line with the case-law of the ECtHR and the relevant EU legislation.

Defamation

244. Defamation is regulated by the Civil Code and the Criminal Code of Hungary therefore on one hand it may entail criminal responsibility and/or create a legal title for damages in civil proceedings. Modification or decriminalization of the relevant laws in force is currently not on the table.

Question no. 29 — Audit of non-governmental organizations

245. Based on the Hungarian legislation, the authorized audit bodies of Hungary have the right and duty to control the use of international funds which competence is aimed at combating inequality and to ensure the transparent use of resources. Such procedures do not conflict with the rights under the Covenant to which Hungary is committed.